

REMARKS

Claims 1, 2, 9, 10 and 18-19 have been amended. Claims 4, 11, 13 and 20-35 have been cancelled without prejudice or disclaimer. New claims 42-50 have been added. Thus, claims 1-3, 5-10, 12, 14-19 and 42-50 are pending in the application. Reconsideration is respectfully requested.

Rejections Under 35 USC § 112, Second Paragraph

Claims 4 and 20-41 were rejected under 35 USC § 112, second paragraph. All of the rejected claims have been cancelled.

Prior Art Rejections

Claims 1-7, 20-24, 27 and 28 were rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 4,033,650 to Alissandratos (Alissandratos '650). Claims 1-4 and 20-24 were rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 5,984,100 to Ramsey et al. (Ramsey).

Claims 1-7 and 20-28 were rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 4,317,605 to Alissandratos (Alisandratos '605). Claims 1, 8, 9, 20, 21, 29 and 30 were rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 5,924,566 to Gibbs (Gibbs).

Claims 31-41 were rejected under 35 USC 103(a) as being unpatentable over Gibbs in view of Alissandratos '650. Claims 10-19 were rejected under 35 USC 103(a)

as being unpatentable over Alissandratos '605 in view of U.S. Patent No. 5,836,322 to Borger et al. (Borger).

Claim 1 is directed to a toilet tool holder and features a second shell rotatably engaged to a first shell wherein the second shell rotates with respect to a vertical center axis of the first shell. Claim 1 further features respective upper portions of openings of the first and second shells include respective apertures aligned with the first shell vertical center axis, both apertures are adapted to receive a handle of a tool.

None of the prior art references cited by the Examiner, including Alissandratos '650, Ramsey, Alisandratos '605, or Gibbs, taken alone or together, disclose, teach or suggest a toilet tool holder wherein a second shell rotates about a vertical center axis of a first shell and respective upper portions of the openings of the first and second shells include respective apertures aligned with the vertical center axis, both apertures being adapted to receive a handle of a tool. Specifically, both Ramsey and Gibbs teach a hinged structure to connect the movable and stationary portions of the respective devices and there is no second shell that rotates about a vertical center axis of the first shell. Ramsey teaches a vertical hinge that couples the door section 14 with the wall 12. The hinge in Ramsey is positioned on the outer periphery of the wall 12 and thus does not result in the door section 14 rotating around a vertical center axis of the wall 12. Indeed, the door structure taught in Ramsey precludes the hinge being positioned at the vertical center axis of the wall 12.

In Gibbs, the hinge between the hatch member 20 and the base 8 is horizontal and extends along an outer surface of the base. Thus, in the plunger caddy of Gibbs,

the hatch member 20 does not and could not rotate about a vertical center axis of the base 8.

Alissandratos '650 and Alissandratos '605 do not have upper apertures aligned with a vertical center axis adapted to receive a handle of a tool. The wall mounted enclosure devices taught in the two Alissandratos' patents both include a sanitary brush completely enclosed within an enclosure device. See Figure 2 of Alissandratos '605 and Figure 3 of Alissandratos '650. Since the enclosure devices of the Alissandratos patents are both designed to be mounted to a wall, there would simply be no need to have the handle extending from the enclosure devices. Further, there is nothing in the teachings of Ramsey or Gibbs that would cause one of skill in the art to modify the enclosure devices of Alissandratos '605 and Alissandratos '650 to provide for upper apertures aligned with the vertical center axis adapted to receive a handle of a tool.

For all of these reasons, claim 1 is patentable over the references applied by the Examiner, whether those references are taken alone or in combination.

Claims 2-3 and 4-9 depend, directly or indirectly, from claim 1 and, thus, are patentable over the references applied by the Examiner, whether those references are taken alone or in combination.

Claim 10 is directed to a tool holder and features a dome-shaped main body and a rotating member rotating with respect to the main body about a vertical center axis of the main body. Claim 10 also features respective upper portions of openings of the main body and the rotating member include respective apertures aligned with the main

body's vertical center axis, both the main body and the rotating member are adapted to receive a handle of a tool.

None of the prior art references cited by the Examiner, including Alissandratos '605 or Bolger, taken alone or together, disclose, teach or suggest a tool holder wherein a rotating member rotates about a vertical center axis of a main body and respective upper portions of the openings of the main body and the rotating member include respective apertures aligned with the vertical center axis, both apertures being adapted to receive a handle of a tool.

As discussed above, Alissandratos '605 does not have upper apertures aligned with a vertical center axis adapted to receive a handle of a tool. Alissandratos '605 teaches a wall mounted enclosure device which includes a sanitary brush completely enclosed within the enclosure device. Since the enclosure device of the Alissandratos '605 patent is designed to be mounted to a wall, there would simply be no need to have the handle extending from the enclosure devices. Further, there is nothing in the teachings of Bolger that would cause one of skill in the art to modify the enclosure device of Alissandratos '605 to provide for upper apertures aligned with the vertical center axis adapted to receive a handle of a tool.

The Bolger patent teaches a storage and cleaning unit for a toilet plunger wherein two lid-halves 25 are hinged by horizontal hinges 120 to the container 22. A handle 104 is provided to pivot the two lid-halves 25 to an open position. The clamshell like operation of the Bolger unit provides no teaching, suggestion or motivation to modify the Alissandratos '605 patent enclosure to render obvious claim 10. As the

Federal Circuit Court of Appeals has repeatedly warned, motivation to combine references cannot come from hindsight reconstruction based on the claimed invention:

"'Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so.' Although couched in terms of combining teaching found in the prior art, the same inquiry must be carried out in the context of a purported obvious 'modification' of the prior art. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. ... Here the Examiner relied upon hindsight to arrive at the determination of obviousness. It is impermissible to use the claimed invention as an instructions manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that '[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.'"

In re Fitch, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992).

The Examiner's combination of the Alissandratos '605 patent and the Borger patent to render claim 10 obvious is based solely on impermissible hindsight reconstruction given what is disclosed and claimed in the present invention.

For all of these reasons, claim 10 is patentable over the references applied by the Examiner, whether those references are taken alone or in combination.

Claims 12 and 14-19 depend, directly or indirectly, from claim 10 and, thus, are patentable over the references applied by the Examiner, whether those references are taken alone or in combination.

New claims 42-50 are directed to a toilet tool holder in combination with a tool having an implement and a handle. Independent claim 42 recites that the holder features a second shell rotatably engaged to a first shell wherein the second shell rotates with respect to a vertical center axis of the first shell. Claim 42 further recites

that the holder features respective upper portions of openings of the first and second shells include respective apertures aligned with the vertical center axis, both of which are adapted to receive a handle of a tool. Claim 42 is patentable over the references applied by the Examiner, whether those references are taken alone or in combination.

Claims 43-50 depend, directly or indirectly, from claim 42 and, thus, are patentable over the references applied by the Examiner, whether those references are taken alone or in combination.

Conclusion

It is respectfully submitted that all pending claims are in condition for allowance and prompt notice to that effect is respectfully requested.

Respectfully submitted,

Date: 10/13/06



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